

November 16, 2011

Submitted via e-mail to BDO@usbr.gov

U.S. Bureau of Reclamation
Bay-Delta Office
801 I Street, Suite 140
Sacramento, CA 95814

Subject: Comments on the “First Amendment to the Memorandum of Agreement on the Planning, Preliminary Design and Environmental Compliance for the Delta Habitat Conservation and Conveyance Program in Connection with the Development of the Bay Delta Conservation Plan”

Thank you for providing the opportunity for public comment on the Memorandum of Agreement (MOA) for the Bay Delta Conservation Plan (BDCP). We applaud your efforts to solicit comments from interested parties and enhance the transparency of the BDCP as it is further developed.

The East Bay Municipal Utility District (EBMUD) supports the goal of the Export Water Contractors (referred to in the MOA as “Public Water Agencies”) to improve the reliability of their Delta water supplies. EBMUD has a direct interest in any solution to improve the reliability of the Delta Water supplies of the Export Water Contractors.

In the context of the BDCP, EBMUD has consistently stated that its ratepayers should not be held responsible for flow obligations or other mitigations necessitated by new conveyance, or be required to pay for any element of the BDCP without a direct benefit. Our comments regarding the MOA specifically relate to these core concerns as discussed below.

Flow obligations

Among our foremost concerns is the aggressive schedule identified in the MOA that calls for completion of the Environmental Impact Report/Environmental Impact Statement (EIR/EIS) process by February 15, 2013 (Par. II.D.). We understand the desire on the part of the Export Water Contractors to be able to review work products expeditiously and fully delve into the material that they are paying for as the BDCP applicants. At the same time, we have a concern about allowing sufficient time for non-BDCP parties to review, understand and comment on a process that proposes to dramatically alter water delivery operations and implement large scale ecosystem enhancements in the Delta, with an implied expectation of significant “public” funding for implementation. Equally important, the proposed schedule forces decisions about the flow obligations of the BDCP before the State Water Resources Control Board will have completed a more comprehensive proceeding on the Delta Water Quality Control Plan. EBMUD cannot support a process that provides the Export Water Contractors with supply assurances that

other diverters might later have to compensate for with increased flow releases. In light of these concerns, the BDCP analysis should not be forced to completion prematurely on a schedule that in many respects is not realistic (for example, providing less than three months to respond to comments and publish a final EIS/EIR).

Mitigation obligations

We would like to better understand the process for developing the assurances under Section 10 of the Endangered Species Act ("No Surprises" assurances), and the opportunities for public input. Our concern is that the Department of Water Resources and Bureau of Reclamation and/or Export Water Contractors could receive 50-year operating approvals while the efficacy of the habitat measures is tested over decades. These assurances must be tied to the recovery standard for listed species. If the standard is not being met through adaptive management, then the Export Water Contractors should be required to undertake additional measures, including reduced diversions if necessary. It is unacceptable for the Export Water Contractors' assurances to shift responsibilities to others in the watershed to increase water releases, adjust operations, or pay for improvements if the habitat measures are not successful. The burden of providing the desired BDCP outcome must remain with the BDCP applicants.

Cost obligations

Finally, we are concerned about the lack of information, at this late stage in the process, about how the BDCP will be funded. The Export Water Contractors have stated their preference to pay for conveyance facilities alone, with all of the ecosystem costs funded by the public from unknown sources. Given the state's extraordinary budget situation, it is critical to engage a fully transparent dialogue to clarify the financial obligation that the public is expected to carry. In particular, a clear methodology should be developed to distinguish benefits received by Export Water Contractors and broader public benefits. The BDCP must not be developed and implemented in a way that unfairly burdens some with costs that are not clearly linked to the benefits received.

We appreciate the opportunity to provide comments on the Memorandum of Agreement (MOA) for the Bay Delta Conservation Plan (BDCP). Due to the profound scope and potential long-term changes that are proposed by this applicant-driven process, we encourage you allow sufficient time and processes to address these concerns comprehensively. We look forward to a continued dialogue on these critical issues, in the service of advancing a BDCP that can be widely supported by stakeholders. If you would like any additional information, please contact me at (510) 287-0101.

Sincerely,



Alexander R. Coate
General Manager

ARC:DW

cc: Senators Dianne Feinstein & Barbara Boxer
Members of EBMUD's Congressional delegation
Kenneth Salazar, Secretary of the Interior
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